

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
SHAMARIAE JONES,  
  
Defendant.

Case No. 2:17-cr-00042-APG-CWH  
  
**Order Granting in Part Motion for  
Acquittal**  
  
[ECF No. 233]

Defendant Shamariae Jones was convicted by a jury of eight crimes related to a series of armed robberies. He now moves for judgment of acquittal under Federal Rule of Criminal Procedure 29(a). I grant the motion in part. There was sufficient evidence to convict Jones of two counts of bank robbery, conspiracy to commit bank robbery, and one count of brandishing a weapon. But the evidence against Jones on the other charges (robbing a Starbucks, conspiracy to commit that robbery, and two gun charges) was so lacking that the verdicts cannot be based on anything but pure speculation, so I acquit him of those charges.

**FACTUAL BACKGROUND**

Jones and co-defendant Edwin Arnold, Jr. were accused of robbing a Starbucks restaurant twice and two banks (a Citibank and a Chase Bank) between December 29, 2016 and January 26, 2017. The Government's theory of the case has always been that Jones was the getaway driver for all four robberies, and that a third, unindicted co-conspirator participated in some of the robberies. *See* ECF No. 234 at 6 n.2.

No video exists of the first Starbucks robbery (on December 29, 2016), but witnesses identified Arnold as the lone robber.

1       Regarding the Citibank robbery (on January 10, 2017), surveillance video shows two  
2 Black men enter the bank, one of the robbers (later identified by victims as Arnold) point a  
3 chrome handgun at a teller and receive cash, and both robbers exit.

4       Video of the second Starbucks robbery (on January 24, 2017) shows two Black men enter  
5 the store separately. One robber (later identified by victims as Arnold) brandishes a chrome  
6 handgun and receives cash from an employee. The other robber wears an oversized grey-and-  
7 black hoodie sweatshirt that is pulled tight over a baseball cap such that his face cannot be seen  
8 on the video.

9       Video of the Chase Bank robbery (on January 26, 2017) shows one Black man (later  
10 identified by victims as Arnold) enter alone, point a chrome handgun at a customer and bank  
11 teller, receive cash from the teller, and point the gun at another employee and a customer on the  
12 way out of the bank.

13       While the Chase Bank robbery was taking place, law enforcement officers were staking  
14 out Arnold's apartment to arrest him. A few minutes after the robbery, Jones drove up in a car  
15 and backed into a parking space in front of Arnold's apartment. He got out of the car and got  
16 into the back seat, where he sat "for quite some time." ECF No. 237 at 117 (transcript of Officer  
17 Beck's testimony). He eventually got out again and opened the trunk, from which Arnold  
18 climbed out. The two hurried into Arnold's apartment where they were arrested moments later.

19       Officers searched the car Jones was driving and found in the trunk a chrome handgun  
20 matching the one used in the robberies and a grey-and-black sweatshirt matching the one worn  
21 by one of the robbers in the second Starbucks robbery. In the back seat of the car officers found  
22 loose ammunition usable in the gun.

1 Jones admitted to an FBI agent that he was the getaway driver for all four robberies, and  
2 that \$600 found in his pants pocket came from “earlier that day.” But the bulk of Jones’  
3 statements to the FBI agent were not admitted into evidence at trial because the Government  
4 elected to try Jones and Arnold together, and admission of most of Jones’ statements would have  
5 violated the Confrontation Clause. *See Bruton v. United States*, 391 U.S. 123 (1968).  
6 Particularly, the jury was not told that Jones admitted his involvement in the robberies, let alone  
7 being the getaway driver. Rather, the jury heard only that he admitted the \$600 came from  
8 “earlier that day.” ECF No. 239 at 181 (transcript of former FBI Special Agent Henry  
9 Schlumpf’s testimony).

10 Jones and Arnold were convicted by the jury of eight crimes: two counts of bank robbery  
11 (Citibank and Chase Bank), one count of interference with commerce by robbery (the second  
12 Starbucks), three counts of brandishing a firearm during and in relation to a crime of violence,  
13 and two counts of conspiracy. ECF No. 229. Arnold was also convicted of the first Starbucks  
14 robbery and a related brandishing charge, but Jones was acquitted of those two crimes. Jones  
15 now moves for acquittal of all charges against him, arguing that there is insufficient evidence to  
16 convict him.

### 17 LEGAL STANDARD

18 In deciding Jones’ motion, “the relevant question is whether, after viewing the evidence  
19 in the light most favorable to the prosecution, *any* rational trier of fact could have found the  
20 essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307,  
21 319 (1979) (emphasis in original). While this standard is highly deferential to the jury, “[m]ore  
22 than a ‘mere modicum’ of evidence is required to support a verdict.” *United States v. Nevils*, 598  
23 F.3d 1158, 1164 (9th Cir. 2010) (quoting *Jackson*, 443 U.S. at 320). The evidence must support

1 a “reasonable inference” by the jury, rather than “mere speculation.” *Id.* at 1165. And “mere  
2 proximity to contraband, or association with a person having possession of such contraband, is  
3 insufficient standing alone to support a finding of possession of that contraband.” *Id.*

4 In its opposition to the motion, the Government acknowledges that its theory of the case  
5 has always been that Jones was the getaway driver for all the robberies and that another,  
6 unidentified robber assisted Arnold inside Citibank and Starbucks. ECF No. 234 at 6 n.2. This  
7 theory is based on Jones’ admissions to the FBI agent, most of which the jury never heard. *Id.*  
8 No eyewitness identified Jones at any of the robberies. The evidence against Jones was  
9 circumstantial: arriving at Arnold’s apartment with Arnold in the trunk immediately after the  
10 Chase Bank robbery; \$600 in his pocket that he admitted came from “earlier that day”; the gun,  
11 sweatshirt, and ammunition found in the car; and surveillance videos from the robberies.

#### 12 **The Chase Bank robbery and conspiracy**

13 Viewing the evidence in the light most favorable to the Government, a rational juror  
14 could find Jones guilty of committing the Chase Bank robbery. Immediately after that robbery,  
15 while the police were staking out Arnold’s apartment, Jones was seen backing a car “known to  
16 be associated with Mr. Arnold” into a parking spot in front of Arnold’s apartment. ECF No. 237  
17 at 115-16 (transcript of Officer Sean Beck’s testimony). After lingering in the back seat of the  
18 car, Jones opened the trunk to let Arnold out. The gun and matching ammunition were found in  
19 the car and Jones had \$600 in his pocket that he admitted came from “earlier that day.” Viewing  
20 this evidence in the light most favorable to the Government, a rational trier of fact could find the  
21 elements of bank robbery beyond a reasonable doubt. *Jackson*, 443 U.S. at 319. The jury could

1 also infer that he conspired with Arnold to be the getaway driver for this robbery.<sup>1</sup> I will not  
 2 overturn the jury's verdicts on the charges of bank robbery and conspiracy to commit bank  
 3 robbery regarding the Chase Bank robbery.

4 **The Starbucks robbery, conspiracy, and brandishing a weapon<sup>2</sup>**

5 It is a closer question regarding the Starbucks robbery. The Starbucks surveillance video  
 6 shows two Black men entering the store. The face of the unidentified second robber cannot be  
 7 seen. That robber wore a grey-and-black sweatshirt, which was found in the trunk of the car  
 8 Jones was driving two days later when he was arrested with Arnold. Again, the Government  
 9 does not contend Jones was that second robber.

10 The only evidence linking Jones to this robbery is him driving Arnold home immediately  
 11 after the Chase Bank robbery two days later and the sweatshirt, gun, and ammunition found in  
 12 the car. The Government presented no evidence as to ownership of the car or whether Jones had  
 13 possession of it at any time other than immediately before he was arrested. Rather, Las Vegas  
 14 Metropolitan Police Department Officer Sean Beck described the car as "Mr. Arnold's vehicle or  
 15 the vehicle that he was known to be associated with" and "the vehicle associated with Mr.  
 16 Arnold." ECF No. 237 at 115-16 (transcript of his testimony). Had the evidence shown Jones  
 17 was the getaway driver, he could be found guilty of Hobbs Act robbery and the gun charge under  
 18 either an aiding and abetting theory or a co-conspirator liability theory. *See* ECF No. 221 at 23,  
 19 24 (jury instructions for co-conspirator liability and aiding and abetting). But, again, no

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 21 <sup>1</sup> *See* ECF No. 221 at 25 (Jury Instruction on conspiracy to commit bank robbery: "One becomes  
 22 a member of a conspiracy by willfully participating in the unlawful plan with the intent to  
 23 advance or further some object or purpose of the conspiracy, even though the person does not  
 have full knowledge of all the details of the conspiracy. Furthermore, one who willfully  
 joins an existing conspiracy is as responsible for it as the originators.").

<sup>2</sup> Because Jones was acquitted of the first Starbucks robbery, I will not address allegations or  
 charges regarding it.

1 evidence was presented to the jury showing he drove the car on the day of this robbery, that he  
2 owned the car, or that he had possession of the car at any time other than immediately before he  
3 was arrested. Thus, the fact that the sweatshirt was found in the car was only a modicum of  
4 evidence connecting him to the Starbucks robbery. More is needed to convict. *Nevils*, 598 F.3d  
5 at 1164.

6 Nor is there any evidence Jones used a gun or knew or could foresee that a gun would be  
7 used in that robbery. *See* ECF No. 221 at 31 (jury instruction on co-conspirator liability for gun  
8 charges stating that “the use of a firearm . . . could reasonably have been foreseen to be a  
9 necessary or natural consequence of the unlawful agreement”); ECF No. 221 at 33-34 (jury  
10 instruction on aiding and abetting liability for gun charges). Thus, the conviction for brandishing  
11 a firearm in connection with the Starbucks robbery cannot stand.

12 The Government offers no additional evidence to support the charge of conspiracy to  
13 commit the Starbucks robbery. The evidence is thus insufficient to sustain the conviction. *See*  
14 *United States v. Jauregui*, 918 F.3d 1050, 1058 (9th Cir. 2019) (“attempts to broaden the already  
15 pervasive and wide-sweeping nets of conspiracy prosecutions are disfavored” (quotations  
16 omitted)).

17 I will overturn the jury’s verdicts and acquit Jones of the charges of interference with  
18 commerce by robbery, conspiracy to commit interference with commerce by robbery, and  
19 brandishing a weapon in connection with the Starbucks robbery.

#### 20 **The Citibank robbery**

21 The surveillance video from the Citibank robbery shows two Black men committing the  
22 robbery from several angles, but there is only one brief glimpse of the robbers’ faces in one  
23 video clip. One robber closely resembles Arnold. It is less clear whether the second robber

1 resembles Jones' booking photograph from 16 days later. *See* Trial Ex. 26B. During the trial,  
2 that video clip was admitted into evidence, but the Government did not show it to the jury.  
3 During deliberations, the jury asked to review that clip, which was permitted. ECF No. 241 at 3-  
4 4. Jones was convicted of bank robbery and brandishing a weapon for this robbery.

5       This surveillance video is the only evidence in addition to the evidence found in the car.  
6 Again, the Government does not advocate that Jones was the second robber in the bank. But  
7 viewing the video in the light most favorable to the Government, a rational juror could compare  
8 that video to Jones' booking photo taken 16 days later and, in combination with other  
9 circumstantial evidence, believe it is Jones. Even if that belief may be mistaken, I cannot  
10 overturn the jury's finding under these circumstances. *See Jackson*, 443 U.S. at 319 ("[T]he  
11 relevant question is whether, after viewing the evidence in the light most favorable to the  
12 prosecution, *any* rational trier of fact could have found the essential elements of the crime  
13 beyond a reasonable doubt." (emphasis in original)). I therefore will deny the motion to acquit  
14 Jones of the bank robbery charge regarding the Citibank robbery.

15       **The gun charges for the bank robberies**

16       Jones contends there is insufficient evidence to convict him of brandishing a firearm in  
17 connection with either of the bank robberies.

18       A defendant can be held responsible for the foreseeable acts of co-conspirators. *Pinkerton*  
19 *v. United States*, 328 U.S. 640, 647-48 (1946). "Whether an act is foreseeable is a fact-driven  
20 and case-specific inquiry, conducted under the deferential standard of review common to all  
21 sufficiency of the evidence claims." *United States v. Carr*, 761 F.3d 1068, 1080-81 (9th Cir.  
22 2014). Thus, the question is whether it was foreseeable to Jones that Arnold would use a gun in  
23 each of the robberies.

1 The only direct evidence connecting Jones to the gun is that the gun was found in the  
2 trunk of the car he was driving immediately after the Chase Bank robbery. Arnold emerged from  
3 that trunk. The Government also points out that ammunition usable in the gun was found in the  
4 back seat of the car. Again, however, the Government presented no evidence that Jones owned  
5 the car or had possession of it at any time before he was seen parking it in front of Arnold's  
6 apartment. And no evidence was presented that Jones was involved in planning any of the  
7 robberies, or that he discussed them with Arnold before they occurred.

8 In *Carr*, the Ninth Circuit affirmed the district judge's grant of a motion for acquittal of  
9 gun charges against one defendant (Franklin) under similar circumstances. In that case, "there  
10 was no direct evidence linking Franklin to the use of firearms, and no evidence that guns were  
11 discussed or present at the planning meeting" that Franklin allegedly attended. 761 F.3d at 1081.  
12 The Government argued that use of a firearm was foreseeable because of the nature of the  
13 "takeover" style of robbery, and because at least one robber having a gun made it likely it was  
14 discussed at the planning meeting. *Id.* The trial judge overturned the guilty verdicts against  
15 Franklin on the gun charges because there was no evidence that Franklin was at the scene of the  
16 robbery when the guns were displayed or used, and the evidence did not show this was the type  
17 of "takeover" robbery that would necessitate the use of guns for crowd control. *Id.* at 1080. The  
18 Ninth Circuit affirmed because "no evidence showed that the robbers planned to use guns to  
19 subdue or intimidate the tellers, or that Franklin was aware that at least one of his coconspirators  
20 was carrying a gun . . . ." *Id.* at 1081.

21 Here, the evidence is similarly lacking regarding the Citibank robbery. There is no  
22 evidence that Jones was involved in planning that robbery or that he knew a gun would be used.  
23 The Government argues that the jury could infer that Jones foresaw the use of the gun because he

1 was involved in a pattern of robberies in the same general area, each involving a gun. ECF No.  
2 234 at 10. But there is no evidence that Jones participated in or helped plan a robbery involving  
3 a gun before the Citibank robbery. The gun was clearly displayed at that robbery, so he could  
4 have foreseen the use of the gun in the later Chase Bank robbery. I therefore will not acquit him  
5 of the gun charge regarding the Chase Bank robbery. But it is too far of a leap, based on the lack  
6 of evidence, to conclude that Jones foresaw the use of a gun in the earlier Citibank robbery. *See*  
7 *Carr*, 761 F.3d at 1081 (“A finding of reasonable foreseeability must be based upon something  
8 more than . . . observations about bank robberies in general.”).

9 I will grant Jones’ motion to acquit him on the brandishing charge related to the Citibank  
10 robbery but not the charge related to the Chase Bank robbery.

# 11 CONCLUSION

12 There was sufficient evidence to convict Jones of two counts of bank robbery, conspiracy  
13 to commit those robberies, and one count of brandishing a firearm (related to the Chase Bank  
14 robbery). But the evidence against Jones on the other charges was so lacking that the verdicts  
15 cannot be based on anything but pure speculation. I grant the motion as to those other charges.

16 I THEREFORE ORDER that Jones’ motion (ECF No. 233) is **granted in part**. I deny  
17 the motion as to Count Two (conspiracy to commit bank robbery), Count Five (bank robbery),  
18 Count Nine (bank robbery), and Count Ten (brandishing a firearm). But I grant the motion and  
19 overturn the jury’s verdict on the other charges and acquit Jones of Count One (conspiracy to  
20 commit interference with commerce by robbery), Count Six (brandishing a firearm), Count  
21 Seven (interference with commerce by robbery), and Count Eight (brandishing a firearm).

22 Dated: September 15, 2021.

23   
ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE